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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,771	11/03/2000	Michael F. Marlin		4378

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Jonathan E Grant  
Grant Patent Services  
2120 L Street NW  
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EXAMINER

MILLER, BENA B

ART UNIT PAPER NUMBER

3712

DATE MAILED: 12/05/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/704,771

Applicant(s)

MARLIN, MICHAEL F.

Examiner

Bena Miller

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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***Drawings***

The drawings are objected to because the examiner is unable to determine which element(s) is/are represented by a particular reference sign(s). For example only, the examiner is unsure what element reference sign 14 represents. The applicant should note that if new drawings are submitted **New Matter should not be introduced.**

Correction is required.

Color photographs and color drawings are only acceptable for examination purposes if a petition filed under 37 CFR 1.84(a)(2) or (b)(2) is granted permitting their use as formal drawings. In the event applicant wishes to use the drawings currently on file as formal drawings, a petition must be filed for acceptance of the photographs or color drawings as formal drawings. Any such petition must be accompanied by the appropriate fee as set forth in 37 CFR 1.17(i), three sets of drawings or photographs, as appropriate, and an amendment to the first paragraph of the brief description of the drawings section of the specification which states:

The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings have been satisfied.

The drawings are objected to because the drawings fail to have the figures listed for each drawing. Correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 9, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with indefiniteness. The following examples are provided for the applicant's use in making corrections wherever appropriate but not specifically pointed out.

Regarding claim 7, the examiner is unsure as to what is all encompassed by the phrase "brightly colored".

Regarding claims 9 and 10, the examiner is unsure as to what is all encompassed by the phrase "a fashion accessory". Also, the claims appear to recite only functions or intended uses of the claimed toy. Accordingly the additional structural features sought to be encompassed by these claims can not be determined.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson et al.

Regarding claim 1, Wilson teaches a material (fig.2), a coiled section (fig.2) and a handle section(see marked copy fig.2) configured as claimed.

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Regarding claims 2-4 and 6, the examiner takes the position that the coiled section of Wilson ranges between the lengths and diameters as claimed.

Regarding claim 5, Wilson further teaches a straight piece (fig.2) configured as claimed.

The examiner considers the device of Wilson to be inherently capable of the functions recited in of claims 9 and 10.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Molenaar.

Wilson teaches in figures 1-4 the invention substantially as claimed. However, Wilson fails to teach a brightly colored coil. Molenaar teaches in column 5, lines 61-63, a line of paint, ink, colored plastic is secured to the coil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply a bright color as taught by Molenaar to the coil of Wilson for the purpose of providing excitement when playing with the coil.

Regarding claim 8, Wilson fails to teach words printed on the coils. Molenaar teaches, in figure 1, colored indicia (lines—column 5, lines 60-67) representing a dog

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configuration is located on the coil section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply words as taught by Molenaar to the coiled section of Wilson for the purpose of forming a phrase when playing.

Regarding claim 9, Wilson fails to teach plastics having memory. Molenaar teaches in column 4, lines 3-36 a plastic coil having memory. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic as taught by Molenaar for the coil of Wilson for the purpose of preventing kinking throughout the coil.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Forrest teaches a key holder. Anderson teaches a spring supported figure. McCarthy teaches a child's toy. Richardson et al teaches a resilient action figure toy. Roth teaches a helical tube with lamps or electric bells and sliding ball. Hing teaches a head attached balancing toy. Healy teaches a combined novelty wind musical instrument and bracelet, finger ring and the like.

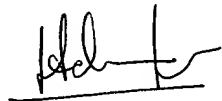
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643.

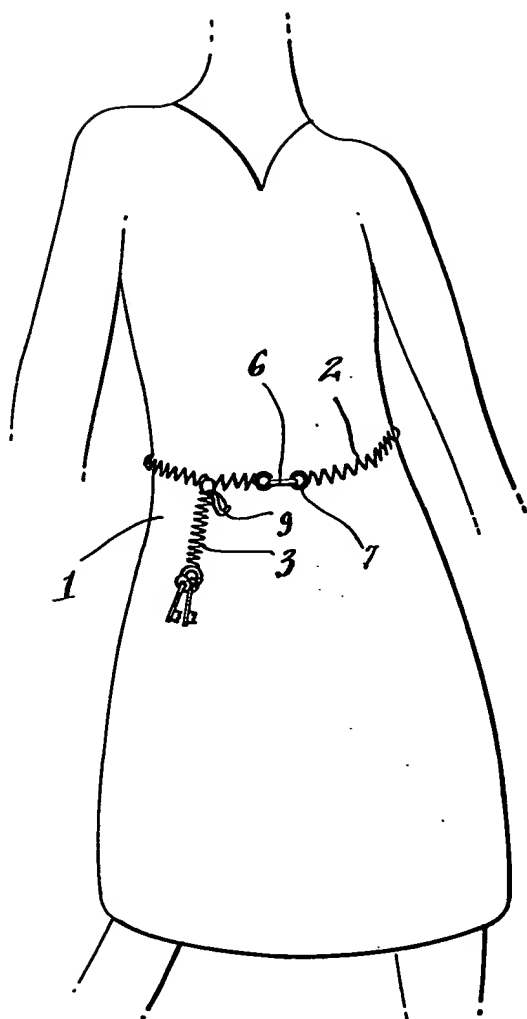
The examiner can normally be reached on Monday-Friday.

bbm

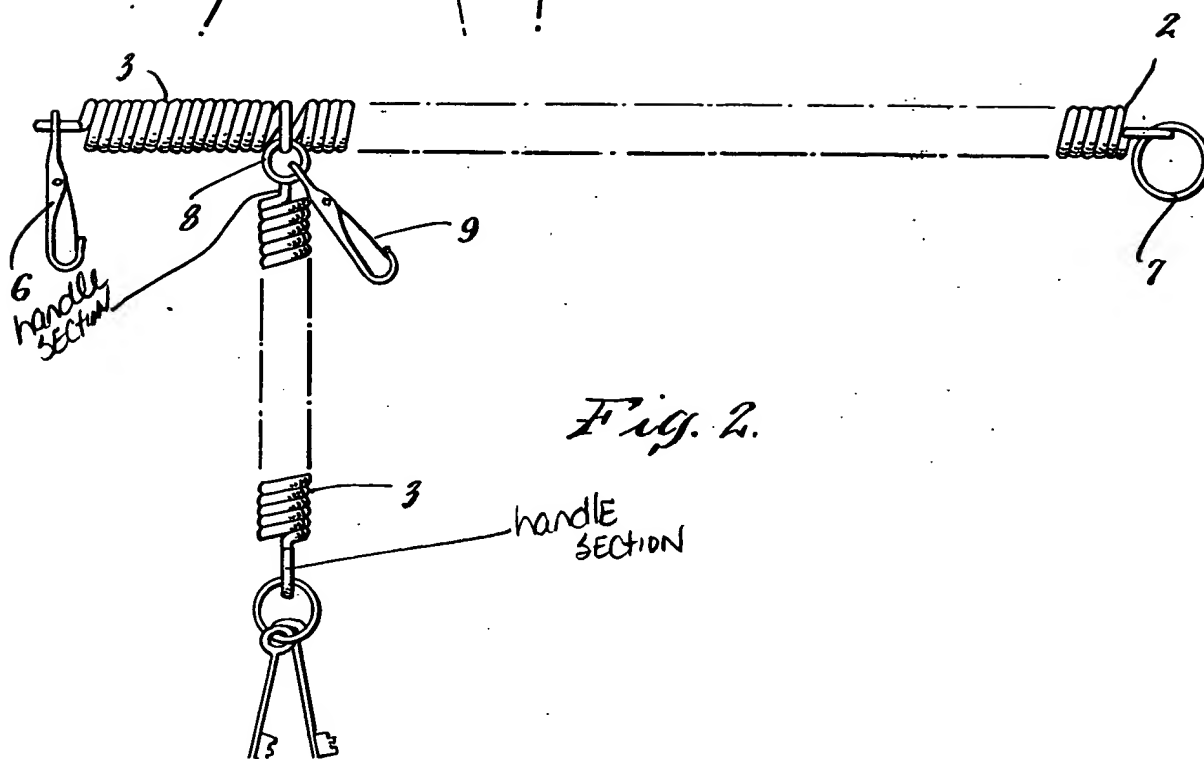
November 30, 2001



JACOB K. ACKUN, JR.  
SUPERVISORY PATENT EXAMINER  
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*Fig. 1.*



*Fig. 2.*